

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WILLIAM MARK WESTMORELAND §
VS § CIVIL ACTION NO. 6:10CV640
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner William Mark Westmoreland, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be denied as successive and dismissed without prejudice. The Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

The Petitioner has separately moved for a certificate of appealability on the issue of ineffective assistance of appellate counsel (docket entry #8). His motion is inappropriate in that at the time he filed it, no judgment had issued from this Court on his petition. In addition, the Magistrate Judge's recommendations include that no certificate of appealability should issue. The Court agrees. In any event, a certificate of appealability for the reason Petitioner states is improper; if he wishes to pursue his ineffective assistance of appellate counsel claim, he must seek approval from the United States Court of Appeals for the Fifth Circuit in order to file his claim as a successive § 2254 petition in this Court. It is therefore

ORDERED that the petition for a writ of habeas corpus is **DENIED** as successive and the case is **DISMISSED** without prejudice. A certificate of appealability (including as requested in Petitioner's motion at docket entry #8) is **DENIED**. All motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 10th day of January, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE